

NG KAH TIANG v. CHIN PENG TOW

[O.C.J. (Ibrahim J.) December 6, 1975]

[Muar — Divorce Petition No. 5 of 1975]

Divorce — Service of petition and related documents by registered post — When further service could be dispensed with — Divorce and Matrimonial Causes Rules, 1953, r. 9(1)(a) and (2).

In this case the solicitor for the petitioner sent to the respondent by registered post a copy of the petition for divorce together with a copy of the Notice of Petition, Form of Acknowledgment (Form 4) and Form of Memorandum of Appearance in duplicate for service on the respondent at a certain address in Australia on August 14, 1975. The delivery card showing that the envelope containing the document had been duly delivered on August 18, 1975 was returned by the Post Office but Form 4 was not returned by the respondent to the solicitor. In this application the petitioner prayed for an order that the petition be deemed to have been duly served on the respondent notwithstanding that Form 4 had not been returned to her solicitor.

Held: the present application can rightly be considered as one for the dispensation of further service on the respondent and the court was satisfied that the petition had actually been served on the respondent. The court ordered that further service of the petition on the respondent be dispensed with and that the petition should proceed to trial.

Case referred to:-

(1) *Heath v. Heath* [1950] P. 193.

DIVORCE PETITION, SUMMONS-IN-CHAMBERS.

Lee Buck Heng for the petitioner.

Ibrahim J.: On August 14, 1975 the solicitor for petitioner sent to respondent by registered post a copy of the petition together with a copy of the Notice of Petition, Form of Acknowledgment (Form 4) and Form of Memorandum of Appearance in duplicate for service on respondent at No. 10, Sulman Road, Wembley Downs, Western Australia, 6019. The delivery card showing that the envelope containing the documents had been duly delivered on August 18, 1975 was returned by the Post Office but Form 4 was not returned by respondent to the solicitor. Service by registered post is permitted by rule 9(1)(a) of the Divorce and Matrimonial Causes Rules, 1953 but is only effective under rule 9(2) if Form 4 is signed by respondent and returned to the solicitor. In this application petitioner is praying for an order that the petition be deemed to have been duly served on respondent notwithstanding that Form 4 has not been returned to her solicitor.

Counsel for petitioner relies on rule 14(6) of the English Matrimonial Causes Rules, 1968 which came into operation on April 11, 1968 to support the application. This rule reads as follows:

"Where a copy of a petition has been sent to a party and no acknowledgment of service has been returned to the court office, the Registrar, if satisfied by affidavit or otherwise that the party has nevertheless received the document, may direct that the document shall be deemed to have been duly served on him."

I have made a careful examination of our rules and I am unable to find any provision equivalent to that of rule 14(6) of the 1968 English Rules. In view thereof I do not think that counsel for petitioner is correct in relying on the said rule.

The mode of proof of service of a petition is set out in rule 11 of our rules. This stipulates that "Un-

A less otherwise directed" a petition shall not proceed to trial unless respondent:

(a) has entered appearance; or

(b) has shown by affidavit in accordance with Form 11 to have been served on respondent personally; or

B (c) has returned to the solicitor for petitioner an Acknowledgment of Service on Form 4.

Our rules 9(2) and 11 are equivalent to rules 8(2) and 10 respectively of the former English Matrimonial Causes Rules, 1947 and in *Heath v. Heath*⁽¹⁾ it was held that

"Where it is satisfied, beyond reasonable doubt, that all possible steps have been taken to notify a respondent, who is out of the jurisdiction, of a petition, and that the probabilities are that he has received the petition and he has simply declined or omitted to send an acknowledgment of the service, as required by rule 8(2) of the Matrimonial Causes Rules, 1947, the court has discretion under rule 10 to dispense with further service and direct that the petition should proceed to trial."

Bucknill L.J. at pages 194 & 195 said:

D "This appeal raises an interesting and important question in the divorce jurisdiction. I think that the facts establish beyond any reasonable doubt that this petition, which was sent in March, 1949, to the husband by registered post, and has never been returned to the sender, was in fact received by him. That being so, what more ought to be done? It is not a proper service, because under rule 8 he ought to sign an acknowledgment of service; but it is a case where the judge, under rule 10, can direct that the petition shall proceed on the ground that he is satisfied that the petition has in fact been received."

Denning L.J. at page 196 said:

"It is very important that everything that is reasonable should be done to bring the petition to the notice of the respondent. At one time there had to be personal service on him. Now service by registered post is permitted, but it is only effective if the acknowledgment of service is signed by the respondent. F It does, however, often happen that the respondents do not sign or return the acknowledgment. When that happens, it does not necessarily mean that the wife has to go to the expense of personal service or advertisement. If the probabilities are that the respondent has received the petition and simply declined or omitted to sign the acknowledgment, then the court can dispense with further service. That is a course which I have repeatedly taken when sitting in chambers in the Divorce Division. On the facts of the present case G I should unhesitatingly have dispensed with further service."

Hodson J. at page 197 said:

"Rule 10, which concerns specifically proof of service, as the side-note indicates, begins with the words, 'Unless otherwise directed.' Those words confer a discretion on the court to direct that, even though the particular formalities indicated in rule 10 have not been complied with, yet the court can draw the proper inference, namely, that in a given set of circumstances the petition has actually been served."

H The facts have already been stated by my Lord, and in my judgment the right inference to draw from those facts is that this petition was brought to the attention of the respondent by being sent to him by registered post in the manner which the rules provide..."

I In my view the present application can rightly be considered as one for the dispensation of further service on respondent and as I am satisfied that the petition has actually been served on respondent I order that further service of the petition on respondent be dispensed with and that the petition should proceed to trial.

Order accordingly.

Solicitors: *Abdullah A. Rahman & Co.*